STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

DEANGELO BAILEY,

Plaintiff,

vs. Case No. 2001-3606-NO

MARSHALL BRUCE MATHERS, III
a/k/a EMINEM SLIM SHADY,

Defendant.
_____/

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OPINION AND ORDER

Defendant Marshall Bruce Mathers, III, a/k/a Eminem Slim Shady (hereinafter referred to as "Defendant") has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff requests the Court deny Defendant's motion.

Defendant is a successful hip-hop/rap music artist who attended Dort Elementary School in Roseville Michigan, Macomb County. Plaintiff also attended Dort Elementary School during the same time period. This lawsuit arises out of the lyrics contained in Defendant's 1999 song entitled "Brain Damage", released on the "Slim Shady LP", and statements attributed to Defendant during an interview regarding the Brain Damage song published in Rolling Stone Magazine. The lyrics of Brain Damage and remarks by Defendant about the song recapture in part the alleged harassment Defendant received from Plaintiff while at school. The lyrics also describe an alleged incident where Plaintiff beat up Defendant in the bathroom of the school.

Plaintiff filed his complaint against Defendant on August 21, 2002. Plaintiff contends that the lyrics in Brain Damage about him are untrue, and have hurt his reputation. Count 1 of

Plaintiff's complaint alleges invasion of privacy false light relating to the lyrics contained in the song Brain Damage. Count 2 of Plaintiff's complaint alleges false light relating to the April 29, 1999 article in Rolling Stone Magazine written by Anthony Bozza where Defendant allegedly made false statements about Plaintiff.

Defendant contends that summary disposition is appropriate as Plaintiff has failed to create a genuine issue of material fact whether Defendant's lyrics and statements were made with a reckless disregard for the truth and highly offensive. Defendant also contends that the lyrics and statements are not actionable under the substantial truth doctrine, and on the basis that the complained of information had been previously disclosed to the public. Defendant further contends that the statements constitute loosely definable language that can not be proven true or false and therefore are protected under the First Amendment right to freedom of speech and expression.

A motion pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion must be filed with the motion. MCR 2.116(G)(3). Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule; disputed fact (or the lack of it) must be established by admissible evidence. *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich app 360, 364; 480 NW2d 275 (1991). Once the moving party has met this burden, the party opposing the motion must then come forward with a showing that there is truly a dispute. *Id.* In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden*, at 120. Where the proffered evidence fails

to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121. When First Amendment freedoms are involved, the Court must make an independent examination of the record to ensure against forbidden intrusions into the field of free expression and to examine the statements and circumstances under which they were made to determine whether the statements are subject to First Amendment protection. *Ireland v Edwards*, 230 Mich App 607, 613; 584 NW2d 632 (1998), citing *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 322; 539 NW2d 774 (1995).

A proper determination of defamation claims require a balancing of the common law interest in compensating private individuals for injury to their reputation against the First Amendment interest in protecting the free expression of ideas. In *New York Times Co v Sullivan*, 376 US 254, 11 L Ed 2d 686, 84 S Ct 710, (1964), the Supreme Court held that the First Amendment limits the reach of state defamation laws. The Court held that freedom of expression upon public questions is secured by the First Amendment, and that debate on public issues should be uninhibited, robust, and wide-open. *Id.*, at 269-270. In order to protect this interest, the Court noted that freedoms of expression require "breathing space".[1] *Id.*, at 272. In *Gertz v Welch*, 418 US 323, 341; 94 S Ct 2997; 41 L Ed 2d 789 (1974) the Supreme Court noted that the First Amendment requires that we protect some falsehood in order to protect speech that matters. In *Dun & Bradstreet, Inc v Greenmoss Builders, Inc*, 472 US 749, 755; 105 S Ct 2939; 86 L Ed 2d 593 (1985), the Court held that a public official cannot recover damages for

[1] This constitutional protection was later extended to public figures. See *Curtis Publishing Co v Butts*, 388 US 130; 18 L Ed 2d 1094; 87 S Ct 1975 (1967).

defamatory falsehood unless he proves that the false statement was made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not. *Id.* In *Hustler Magazine v Falwell*, 485 US 46, 52; 108 S Ct 876; 99 L Ed 2d 41 (1988), the Court stated, even though falsehoods have little value in and of themselves, they are nevertheless inevitable in free debate, and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted "chilling" effect on speech relating to public figures that does have constitutional value.

The Court has most consistently interpreted the First Amendment to accord maximum protection to public speech about public figures, and has acted more ambiguously in the context of private-figure plaintiffs. *Locricchio v Evening News Ass'n*, 438 Mich 84, 118; 476 NW2d 112 (1991). When the speech is of public concern and the plaintiff is a public official or public figure, the constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a media defendant than is raised by the common law. *Philadelphia Newspapers, Inc v Hepps*, 475 US 767, 775; 106 S Ct 1558; 89 L Ed 2d 783 (1986). Although the Supreme Court has never clearly embraced the media-nonmedia distinction, it has never explicitly rejected it either. *Locricchio*, at 118, n 22. As a result, three important factors define the parameters of libel liability: the public or private-figure status of the plaintiff, the media or nonmedia status of the defendant, and the public or private character of the speech. *Id.*, at 118.

In *Time, Inc v Hill*, 385 US 37; 87 S Ct 534; 17 L Ed 2d 456 (1967), the Supreme Court held that the rule of *New York Times*, also applies to false light cases. An action for false light invasion of privacy requires a communication broadcast to the public in general, or publicized to a large number of people, which places the injured party in a light which would be highly offensive to a reasonable person. *Early Detection Center, PC v New York Life Ins Co*, 157 Mich

App 618, 630; 403 NW2d 830 (1986); Restatement Torts, 2d, § 652E.[2] The Court found the actor must have had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Id.* See also *Rouch v Enquirer & News of Battle Creek* (after remand), 440 Mich 238, 252; 487 NW2d 205 (1992). However, comment d of the Restatement of Torts, § 652E, noted that if *Time v Hill* is modified along the lines of *Gertz v Welch*[3], then the reckless disregard rule would apparently apply if the plaintiff is a public official or public figure, and the negligence rule will apply to other plaintiffs. In *Rouch*, the Michigan Supreme Court held that in a case involving a private plaintiff, a media defendant, and a publication regarding an area of public concern, the plaintiff bears the burden of proving falsity, and adopted negligence as the standard in Michigan. Accordingly, since the case

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[2] Restatement Torts, 2d, § 652 E, p 395, explains that:

> The interest protected by this section is the interest of the individual in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than as he is. In many cases to which the rule stated here applies, the publicity given to the plaintiff is defamatory, so that he would have an action for libel or slander . . . . In such a case the action for invasion of privacy will afford an alternative or additional remedy, and the plaintiff can proceed upon either theory, or both, although he can have but one recovery for a single instance of publicity.
>
> It is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position. When this is the case and the matter attributed to the plaintiff is not defamatory, the rule here stated affords a different remedy, not available in an action for defamation.

[3] *Gertz v Welch, Inc*, 418 US 323, 347; 94 S Ct 2997; 41 L Ed 2d 789 (1974) invited states to define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual. The Court stated that under the First Amendment there is no such thing as a false idea, but there is no constitutional value in false statements of fact. *Id.*, at 339-340. The Court noted that the legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood, as the individual's right to the protection of his own good name reflects no more than our basic concept of the essential dignity and worth of every human being . . . . *Id.*, at 341. The Court further noted that public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. *Id.*, at 344. The first remedy of any victim of defamation is self-help – using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. *Id.* The Court further stated: of course, an opportunity for rebuttal seldom suffices to undo harm of defamatory falsehood. Indeed, the law of defamation is rooted in our experience that the truth rarely catches up with a lie. But the fact that the self-help remedy of rebuttal, standing alone, is inadequate to its task does not mean that it is irrelevant to our inquiry. *Id.*, n 9.

involves a private plaintiff, a media defendant, and an area of public concern, this Court will apply the standard set forth in *Rouch*.

The Supreme Court has also recognized First Amendment constitutional limits on the *type* of speech that may be the subject of state defamation actions. *Milkovich v Lorain Journal Co*, 497 US 1, 16; 110 S Ct 2695; 111 L Ed 2d 1 (1990). In *Milkovich*, the Supreme Court rejected the idea that all statements of opinion are protected and has directed that the defamatory statement must be provable as false to be actionable. *Kevorkian v American Medical Association*, 237 Mich App 1, 5-6; 602 NW2d 233 (1999). In *Milkovich*, the Supreme Court, by way of example, distinguished the actionable statement, "in my opinion Mayor Jones is a liar," from the nonactionable statement, "In my opinion Mayor Jones shows his abysmal ignorance by accepting the teachings of Marx and Lenin." *Id.*, at 6. The Court apparently intended to distinguish between an objectively verifiable event in the former case and a subjective assertion in the latter. *Id.*

The Supreme Court has further recognized that certain statements, although factual on their face, and provable as false, could not be interpreted by a reasonable listener or reader as stating actual facts about the plaintiff. *Ireland v Edwards*, 230 Mich App 607, 617; 584 NW2d 632 (1998); citing *Hustler Magazine, Inc v Falwell*, 485 US 46, 50; 108 S Ct 876; 99 L Ed 2d 41 (1988); *Milkovich*, at 16-17. Thus, parodies, political cartoons, and satires are generally entitled to protection. *Ireland*, at 617. However, this protection was extended in *Greenbelt Cooperative Publishing Ass'n, Inc v Bresler*, 398 US 6; 90 S Ct 1537; 26 L Ed 2d 6 (1970), where the Supreme Court further recognized that some statements, read in context, are not capable of defamatory interpretation. The Supreme Court stated:

> [W]e hold that the imposition of liability on such a basis was constitutionally impermissible – that as a matter of constitutional law, the word

"blackmail" in these circumstances was not slander when spoken, and not libel when reported

* * *

[E]ven the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered [the developer's] negotiating position extremely unreasonable. *Greenbelt*, at 13-14.

In *Hodgins v Times Herald Co*, 169 Mich App 245, 254; 425 NW2d 522 (1988), the Court followed the reasoning contained n *Greenbelt*, and stated: exaggerated language used to express opinion, such as "blackmailer," "traitor" or "crook," does not become actionable merely because it could be taken out of context as accusing someone of a crime. These statements are both necessarily subjective and objectively verifiable, and statements that both do and do not state actual facts about a person. *Kevorkian*, at 8.

In addition to the above constitutional limitations on false light and defamation cases, it is not necessary for defendants to prove that a publication is literally and absolutely accurate in every minute detail to avoid liability. *Collins v Detroit Free Press*, 245 Mich App 27, 33; 627 NW2d 5 (2001). Rather, substantial truth is an absolute defense to a defamation claim, and applies with equal force to false light invasion of privacy claims for relief. *Id.*, at 36-37; see also *Masson v New Yorker Magazine, Inc*, 501 US 496; 111 S Ct 2419; 115 L Ed 2d 447 (1991). The substantial truth doctrine absolves a defendant of liability when the substance of the charge is true, irrespective of slight inaccuracy in the details. *Masson*, at 516-517. Put another way, the statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced. *Id.*, at 517; *Collins*, at 34. Similarly, in *Rouch*, the Court held that slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance. *Rouch*, at 258-259. The Court further stated, it is sufficient for the defendant to justify so much of the defamatory matter as constitutes the sting of

the charge, and it is unnecessary to repeat and justify every word . . . so long as the substance of the libelous charge be justified, and the inaccuracy in no way alters the complexion of the affair, and would have no different effect on the reader than that which the literal truth would produce. *Id.*, at 259.

In the case at hand, the lyrics to the song Brain Damage state in pertinent part:

Way before my baby daughter Hailey
I was harassed daily by this fat kid named D'Angelo Bailey
An eight grader who acted obnoxious, cause his father boxes
so everyday he'd shove me in the lockers
One day he came in the bathroom while I was pissin
And had me in the position to beat me into submission
He banged my head against the urinal til he broke my nose,
Soaked my clothes in blood, grabbed me and choked my throat
I tried to plead and tell him, "We shouldn't beef"
But he just wouldn't leave, he kept chokin me and I couldn't breathe[4]

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[4] The lyrics to the song Brain Damage in its entirety are as follows:

[Doctor] Scalpel [Nurse] Here [Doctor] Sponge [Nurse] Here [Doctor] Wait . . . he's convulsing, he's convulsing! [Nurse] Ah! [Doctor] We're gonna have to shock him! [Nurse] Oh my! Oh my God! [Doctor] We're gonna have to shock him! [Nurse] Oh my God! [Eminem] These are the results of a thousand electric volts A neck with bolts, "Nurse we're losin him, check the pulse!" A kid who refused to respect adults Wore spectacles with taped frames and a freckled nose A corny lookin white boy, scrawny and always ornery Cause I was always sick of brawny bullies pickin on me And I might snap, one day just like that that I decided to strike back and flatten every tire on the bike rack (Whosssssh) My first day in junior high, this kid said, "It's you and I, three o'clock sharp this afternoon you die" I looked at my watch it was one twenty "I already gave you my lunch money what more do you want from me?!? He said, "Don't try to run from me, you'll just make it worse . . . " My palms were sweaty, and I started to shake at first Something told me, "try to fake a stomach ache it works" I screamed, "Owww! My appendix feels like they could burst! Teacher, teacher, quick I need a naked nurse!" [N} "What's the matter?" [E] "I don't know, my leg, it hurts!" [N] "Leg?!? I thought you said it was your tummy?!?" [E] "Oh, I mean it is, but I also got a bum knee!" [N] "Mr. Mathers, the fun and games are over. And just for that stunt, you're gonna get some extra homework." [E] "But don't you wanna give me after school detention?" [N] "Nah, that bully wants to beat your ass and I'm a let him." Chorus: repeat 2X – Brain damage, ever since the day I was born Drugs is what they used to say I was on They say I never knew which way I was goin But everywhere I go they keep playin my song [E] Way before my baby daughter Hailey I was harassed daily by this fat kid named D'Angelo Bailey An eight grader who acted obnoxious, cause his father boxes so everyday he'd shove me in the lockers One day he came in the bathroom while I was pissin And had me in the position to beat me into submission He banged my head against the urinal til he broke my nose, Soaked my clothes in blood, grabbed me and choked my throat I tried to plead and tell him, "We shouldn't beef" But he just wouldn't leave, he kept chokin me and I couldn't breathe He looked at me and said, "You gonna die honkey!" The principal walked in (What's going on in here?) and started helpin him stomp me I made them think they beat me to death Holdin my breath for like five minutes before they finally left Then I got up and ran to the janitor's storage booth Kicked the door hinge loose and ripped out the four inch screws Grabbed some sharp objects, brooms, and foreign tools "This is for every time you took my orange juice, or stole my seat in the lunchroom and drank my chocolate milk. Every time you tipped my tray and it dropped and spilt. I'm gettin you back bully! Now once and for good." I cocked the broomstick back and swung hard as I could and beat him over the head with it till I broke the wood Knocked him down, stood on his chest with one foot . . . Made it home, later that same day Started reading a comic, and suddenly everything became gray I couldn't even see what I was tryin to read I went deaf, and my left ear started to bleed My mother started screamin, "What are you on, drugs?!? Look at you,

The relevant part of the April 29, 1999 Rolling Stone magazine article written by Anthony Bozza states:

> At the top of the shit list was his grade-school nemesis, D'Angelo [sic] Bailey. Yes, the bully who gets it with a broomstick in "Brain Damage" was entirely real. "Motherfucker used to beat the shit out of me," Eminem said. "I was in fourth grade and he was in sixth. Everything in the song is true: One day he came in the bathroom, I was pissing, and he beat the shit out of me. Pissed all over myself. But's that' [sic] not how I got really fucked up.

Plaintiff contends that the statements about him in the song Brain Damage are untrue. Plaintiff testified at his deposition that: "we basically talked to each other and like joked with each other"; "joked, play games, you know, like we probably like – I mean this is kid stuff, so I'm saying. Call each other names, you know saying skinny or something like that, you know, just –"; "my friend David Bowman used to do bully type things"; "that mean I was there. My friends did bully type things, I was just with them"; "David Bowman would push him down, or throw him, flip him over or-"; "I might have bumped him or something. I mean actually physically hurt him, no." Plaintiff testified that he bumped into Defendant less than ten times, but never bumped Defendant in the bathroom. Plaintiff further explained that the bumps were accidental. Plaintiff has also supplied the Court with an affidavit attesting that he never physically attacked or bullied Defendant; that he never beat or choked Defendant; he never threatened to kill Defendant; he never did anything to Defendant that would cause him to have a

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you're gettin blood all over my rug!" (Sorry!) She beat me over the head with the remote control opened a hole, and my whole brain fell out of my skull I picked it up and screamed, "Look bitch, what have you done?!? [M] "Ohm my god, I'm sorry son" [E] "Shut up you cunt!" I said, "Fuck it!" Took it and stuck it back up in my head then I sewed it shut and put a couple of screws in my neck Chorus.

broken nose; and he never left Defendant lying on the floor of the elementary school bathroom in a pool of his own blood.[5]

The Court will first address whether the language used in the lyrics of the song Brain Damage and the statements attributed to Defendant in the Rolling Stone article constitute an objectively verifiable event and provable as false. As a preliminary matter, a court may decide as a matter of law whether a statement is actually capable of defamatory meaning. *Sawabini v Desenberg*, 143 Mich App 373, 379; 372 NW2d 559 (1995). The lyrics that Plaintiff contends placed him in a false light are as follows: "so everyday he'd [Plaintiff] shove me in the lockers"; "And [Plaintiff] had me in the position to beat me into submission"; "he [Plaintiff] banged my head against the urinal til he broke my nose"; "[Plaintiff] soaked my clothes in blood, grabbed me and choked my throat". The first phrase, "everyday he'd [Plaintiff] shove me in the lockers", contains an objectively verifiable fact that Plaintiff shoved Defendant into the lockers, and an obvious exaggeration, that it happened every day.[6] The second phrase, "[he] beat me into submission", contains two separate ideas; an objectively verifiable fact that Plaintiff "beat" Defendant, and a subjective assertion that Plaintiff beat Defendant into submission. The second part of the phrase is protected by the First Amendment as not actionable since it can not be ascertainable. See *Greenblat* and *Kevorkian*, supra. The third phrase, "he banged my head against the urinal til he broke my nose", contains two objectively verifiable facts that are potentially actionable: that Plaintiff banged Defendant's head against the urinal, and Plaintiff broke Defendant's nose. However, the latter term "broke" may also be construed as figure of speech, and therefore not actionable. The fourth phrase, "[Plaintiff] soaked my clothes in blood,

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[5] Defendant contends that Plaintiff's affidavit should not be considered since it is contradictory to this deposition testimony. However, it appears to the Court that the only portion of Defendant's affidavit that is contradictory is the statement that he never physically attacked or bullied Defendant.

[6] See *Ireland*, supra.

grabbed me and choked my throat", also contains two objectively verifiable facts: that Plaintiff soaked Defendant's clothes in blood, and Plaintiff choked Defendant. Consequently, several of the phrases are ascertainable as facts and therefore potentially actionable.[7]

The Court will next address whether Plaintiff has created a genuine issue of material fact that the statements contained in the song Brain Damage and the Rolling Stone article attributes to him characteristics, conduct or beliefs that are false, and placed him before the public in a false position. This inquiry, as explained above, requires the Court to determine whether the statements are substantially true. Plaintiff has admitted that during elementary school he called defendant names, and bumped into defendant ten times in the hallway. Plaintiff also admitted the "bumps" were not consensual, and explained that they were accidental. Plaintiff further admitted he was part of a group that used to do "bully type things" such as push defendant down, throw defendant, flip defendant over, or throw defendant. Plaintiff has also failed to refute Defendant's testimony that Plaintiff was twice the size of Defendant, Plaintiff shoved Defendant into walls, called him names, took his orange juice, and knocked over his books. These uncontested facts support a finding that Plaintiff used to bully Defendant.[8] These admissions and testimony must be compared with the lyrics contained in the song to determine whether the statements have a different effect on the reader and/or listener from the uncontested facts. It is clear that the thrust or gist of the lyrics are that Plaintiff bullied Defendant, shoved Defendant into the lockers, and physically assaulted Defendant in the bathroom. The uncontested facts demonstrate Plaintiff bumped Defendant in the hallway, did bully type things such as stealing

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[7] The Court notes that Plaintiff's objections about the statements Defendant allegedly made to Rolling Stone Magazine are essentially the same as the lyrics in the song: that Plaintiff used to "beat the shit out of me", and "One day he [Plaintiff] came in the bathroom, I was pissing, and he beat the shit out of me. Pissed all over myself". Consequently, the Court will treat the lyrics and the statements in the article as the same since they are duplicative.

[8] "Bully" is defined as, "a person who hurts, frightens, threatens, or tyrannizes over those who are smaller or weaker". *Webster's New Universal Unabridged Dictionary, deluxe second edition.*

Defendant's orange juice and knocking over his books, and was part of a group that assaulted Defendant. These uncontested facts demonstrate that Plaintiff essentially committed assault and battery on Defendant.[9] Based upon this conclusion, the Court is satisfied that a reasonable juror could not find that the facts as testified to by Plaintiff would have a different effect on the listener and/or reader of the lyrics contained in the song Brain Damage. Consequently, the lyrics are substantially true and therefore not actionable, and further, Plaintiff has failed to create a genuine issue of material fact that Defendant negligently placed him in a false light as to his character.

The Court is also satisfied that Plaintiff has failed to create a genuine issue of material fact that the lyrics contained in the song Brain Damage are highly offensive when compared to the uncontested facts. Plaintiff testified that he was happy to hear his name mentioned in the song for approximately six months, and willfully cooperated during two interviews about the song. During those interviews, Plaintiff failed to refute the allegations, and instead admitted that, "we used to do bully type things" to Defendant. As the Supreme Court stated in *Gertz*, self help is the first remedy to undo a harm of defamatory falsehood, and is relevant in balancing the rights of the alleged defamed individual with the Defendant's rights to freedom of expression. If Plaintiff believed the lyrics to be "highly objectionable", it would be axiomatic that he would have used the interviews as an opportunity to refute the allegations and shed light on the truth of the matter. Instead, Plaintiff willfully accepted the spot light placed upon him by the song. Consequently, the Court is satisfied that Plaintiff has failed to create a genuine issue of material fact that the lyrics contained in the song Brain Damage are highly objectionable.

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[9] A battery is the willful and harmful or offensive touching of another person, which results from an intended act intended to cause such contact. *Smith v Stolberg*, 231 Mich App 256; 586 NW2d 13 (1998).

In addition, the Court is further satisfied that it is clear from the context of the lyrics contained in the song Brain Damage, that a reasonable person would not take the song as stating actual facts about Plaintiff. The lyrics contain statements that could not occur, and facts that are extremely improbable. It is clear that Defendant is telling a story, a fictional recitation of hard times during grade school when he was bullied by larger children, and exaggerated language is used to convey an image. Any reasonable person hearing the lyrics in context would understand the message intended: that Defendant was bullied in grade school and his alter ego is seeking revenge. Consequently, the lyrics and statements are further not actionable as they are rhetorical hyperbole and exaggerated language. Therefore, Defendant's motion for summary disposition should be granted.[10]

Based upon the reasons set forth above, Defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) is GRANTED.[11] In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

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[10] The Court will not address the remainder of Defendant's argument based upon this finding.

[11] To convey the Court's opinion to fans of rap, the Court's research staff has helped the Court put the decision into a universally understandable format:

Mr. Bailey complains that his rep is trash
So he's seeking compensation in the form of cash
Bailey thinks he's entitled to some monetary gain
Because Eminem used his name in vain

Eminem says Bailey used to throw him around
Beat him up in the john, shoved his face in the ground
Eminem contends that his rap is protected
By the rights guaranteed by the first amendment

Eminem maintains that the story is true
And that Bailey beat him black and blue
In the alternative he states that the story is phony
And a reasonable person would think it's baloney

The Court must always balance the rights
Of a defendant and one placed in a false light
If the plaintiff presents no question of fact
To dismiss is the only acceptable act

IT IS SO ORDERED.

HONORABLE DEBORAH A. SERVITTO

/al

DATED: October 17, 2003

cc: BYRON H. NOLEN
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If the language used is anything but pleasin'
It must be highly objectionable to a person of reason
Even if objectionable and causing offense
Self-help is the first line of defense

Yet when Bailey actually spoke to the press
what do you think he didn't address?
Those false light charges that so disturbed
Prompted from Bailey not a single word

So highly objectionable, it could not be
--Bailey was happy to hear his name on a CD

Bailey also admitted he was a bully in youth
Which makes what Marshall said substantial truth
This doctrine is a defense well known
And renders Bailey's case substantially blown

The lyrics are stories no one would take as fact
They're an exaggeration of a childish act
Any reasonable person could clearly see
That the lyrics could only be hyperbole

It is therefore this Court's ultimate position
That Eminem is entitled to summary disposition.